

CHALMERS PAK & BURCH, LLC
ATTORNEYS AT LAW

1300 PENNSYLVANIA AVE NW #190-612
WASHINGTON, DC 20004

5805 STATE BRIDGE RD - #G77
JOHNS CREEK, GEORGIA 30097

PHONE: 770-630-5927

FAX: 866-716-6089

EMAIL: CHALMERS@POLITICALLAWGROUP.COM

November 20, 2015

Jeff S. Jordan
Assistant General Counsel
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463

OFFICE OF GENERAL
COUNSEL

RECEIVED
FEDERAL ELECTION
COMMISSION

2015 DEC 14 AM 11:06

Re: Response of Huckabee for President, Inc. and Governor Mike Huckabee
in MUR 6888

Dear Mr. Jordan:

This letter is submitted on behalf of Huckabee for President, Inc., its Treasurer Cale Turner, and former Arkansas Governor Mike Huckabee (collectively "Respondents") in response to the Second Supplemental Complaint (the "Complaint") filed by the American Democracy Legal Fund ("ADLF") in the matter designated by the Commission as MUR 6888. For the reasons set forth herein, Respondents deny the allegations contained in the Complaint, and deny that they have violated the Federal Election Campaign Act of 1971, as amended (the "Act").

I. Factual Background. This is the third FEC complaint that has been filed against Respondent by ADLF in recent months. Clearly, ADLF is on a politically-motivated crusade designed to harass Respondents. ADLF's latest attempt fails even more miserably than did its previous two efforts.

As Respondent noted in response to the previous complaints, ADLF is a political organization created by David Brock to serve as an "overtly partisan watchdog group." See Kenneth P. Vogel, *Media Matters' David Brock Expands Empire*, Politico (Aug. 13, 2014). Mr. Brock has publicly claimed that "the vast amount of violations of the public trust can be found on the conservative side of the aisle." *Id.* As such, his new group exists solely to harass Republicans and conservatives with frivolous complaints and sensational allegations. The instant Complaint is yet another example of Mr. Brock's misguided and purely partisan efforts. As was the case with the previous two complaints, this Complaint is without merit and should be dismissed.

November 20, 2015

Page 2

The Complaint states at the outset that it concerns “millions of dollars in illegal ‘coordinated communications’ facilitated through the ongoing, real-time exchange of non-public strategic campaign and party data with groups making purportedly ‘independent’ expenditures” *Id.* at 9.¹ It further claims that “at least eleven Republican candidates for President of the United States are now involved in the scheme to skip the Commission’s ‘coordinated communication’ regulations by passing their most valuable data to outside organizations via the GOP Data Trust and the Koch brothers’ data firm i360.”

As to Respondent, the sole basis for this contention is one sentence which states that, “according to press reports, eleven authorized committees of Republican Presidential candidates have also entered into agreements with the Data Trust, i360, or both.” Footnote 11 of the Complaint explains that, according to a July 24, 2015 article in Bloomberg Politics, certain candidates not including Governor Huckabee are the only “major Republican candidates who have not entered into such agreements.” The Complaint therefore concludes that Governor Huckabee must be one of “[t]he remaining candidates who have apparently retained the Data Trust and therefore are passing their critical voter data to i360 and i360’s outside organization clients” *Id.* at 13 n.11.

That’s it. Nothing more is offered. There is not a single sentence in the Complaint that even references Respondents by name. Indeed, the only time that Respondents’ names appear in the Complaint is in the list of respondents. Quite frankly, the Commission should not tolerate the kind of behavior that is being engaged in by ADLF during this election cycle.

II. Legal Analysis. For the foregoing reasons, the Complaint fails as a matter of law and should promptly be dismissed.

(A) The Complaint Fails to Identify Any Facts Involving Respondents. First, the Complaint must be dismissed because it fails to identify a single fact relevant to Respondent. The Complaint is rife with nothing more than speculation. It is a classic example - indeed, perhaps the penultimate example given the large number of respondents - of a complaining party throwing mud against a wall and hoping that some of it will stick to someone.

As the Commission is aware, the Commission “may find ‘reason to believe’ [that a respondent has violated the Act] only if a complaint sets forth sufficient specific facts which, if proven true, would constitute a violation of [the Act].” MUR 4960, Statement of Reasons of Commissioners Mason, Sandstrom, Smith, and Thomas at 1 (emphasis added); see also 11 C.F.R. 111.9(a). Moreover, the Commission’s rules also require that a complaint “contain a clear and

¹ The Complaint is not paginated. Because the list of parties is an astonishing eight (8) pages long - and presumably lists most of the entities against which Mr. Brock and ADLF have political objections - the first “substantive” page of the Complaint is page 9.

November 20, 2015

Page 3

concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction." 11 C.F.R. 111.4(d)(3). In light of the fact that there is not a single specific fact alleged against Respondent anywhere in the Complaint, clearly that standard is not satisfied in this case. As such, the Complaint must be dismissed on that ground alone.

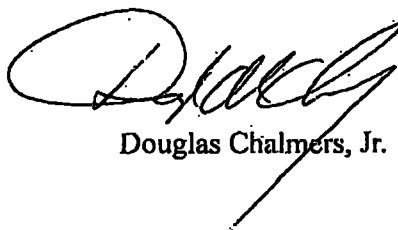
(B) The Complaint Fails to State a Claim for Violation of the Coordination Rules.

The Complaint must also be dismissed for the straightforward legal reason that it fails to state a violation of the coordination rules. In order for a candidate to violate the Act or the Commission's rules on "coordination," there must be a specific "expenditure" by a third party for a specific "public communication" that expressly advocates the election or defeat of a clearly-identified candidate. Moreover, there must be a determination that, as to that expenditure, there was coordination between the candidate or his agents and that third party, and thus that the expenditure was not independent but instead amounted to an excessive in-kind contribution to the candidate. See, e.g., 11 C.F.R. 100.21 *et seq.*

In this case, no such expenditure or public communication relating to Respondent is identified. Moreover, the alleged independent expenditures that are cited in the exhibits to the Complaint all took place in 2014, long before Governor Huckabee became a federal candidate. As such, as a matter of law the Complaint fails to state a claim against Respondent, and it must be dismissed.

III. Conclusion. This Complaint is a waste of the Commission's time, particularly insofar as it relates to Respondents. Respondents have not violated the Act, and they respectfully request that the Commission promptly dismiss the Complaint. Respondents also expressly reserve all Constitutional, statutory or other defenses available under the law.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas Chalmers, Jr.", with a large, stylized initial "D" and a long, sweeping horizontal stroke extending to the right.

Douglas Chalmers, Jr.